

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

\* \* \* \* \*

JOHN D. GAUGLER and  
SHAWN L. GAUGLER,

Appellants,

vs .

TRUSTEES OF SCHOOL DISTRICT  
21J, WHEATLAND COUNTY,  
PATRICIA PRICE, SUPERINTENDENT  
OF SCHOOL DISTRICT 21J, and  
ROSEMARY MITCHELL, CLERK OF  
SCHOOL DISTRICT 21J,

Respondents.

DECISION AND ORDER

OSPI 140-87

\* \* \* \* \*

STATEMENT OF THE CASE

Appellants, parents of Joshua Gaugler, are residents of School District 21J in the elementary district of Judith Gap. Appellants' son, Joshua, attended school in District 16, Arlowton. As Joshua resides 7.5 miles from the nearest public school, Judith Gap, he is an "eligible transportee" for that district. Appellants did not have permission from the resident district to enroll Joshua in District 16. The resident district does provide individual transportation costs to eligible transportees of the district. Appellants have received no transportation monies from the resident district.

The Transportation Committee of Wheatland County held a hearing on August 4, 1987. The hearing was chaired by Wheatland

1 County Superintendent, Effie Winsky.

2 The Transportation Committee voted to deny payment of  
3 transportation to Appellants. An appeal of that decision was  
4 filed with this Superintendent in accordance with ARM 10.6.122  
5 et seq.. Appellants have submitted briefs supporting their  
6 position.

7 DECISION

8 The State Superintendent of Public Instruction has  
9 jurisdiction of this appeal in accordance with Section 20-10-  
10 132(2), MCA.

11 Having reviewed the complete record of the hearing held  
12 before the Wheatland County Transportation Committee and read  
13 the briefs of the parties, this State Superintendent now makes  
14 the following decision:

15 The Findings of Fact of the Wheatland County Transportation  
16 Committee are supported by reliable, probative and substantial  
17 evidence on the whole record. The Conclusions of Law are not in  
18 violation of constitutional or statutory provisions. The  
19 Conclusions of Law are not in excess of the statutory authority  
20 of the Transportation Committee. The Findings of Fact,  
21 Conclusions of Law and Order were not made upon unlawful  
22 procedure and are not affected by error of law.

ORDER

The State Superintendent of Public Instruction hereby affirms the Findings of Fact, Conclusions of Law and Order of the Wheatland County Transportation Committee.

MEMORANDUM OPINION

The Wheatland County Transportation Committee has jurisdiction under Section 20-10-132, MCA, to conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees and act on such appeals on the basis of the facts established at such hearing.

An "eligible transportee" is entitled to transportation, which includes reimbursement in lieu of actual transportation, to attend school in their district. Sections 20-10-101, 20-10-121, MCA. However, if an "eligible transportee" wishes to attend a school outside his district, he must obtain permission from his school board to be provided transportation (reimbursement) by his resident district. 42 A.G. Op. 115 (1988).

Appellants pose various arguments concerning a tuition agreement and a transportation contract. The tuition and transportation statutes were passed at the same time and relate to the same general subject and, therefore, are to be construed together. City of Billings v. Smith, 158 Mont. 197, 490 P.2d

1 21, 230 (1971). These statutes both authorize the resident  
2 school district to pay for students to attend school outside the  
3 district under certain circumstances.

4 The Findings of Fact of the County Transportation Committee  
5 are supported by substantial evidence in the record. Where  
6 evidence is presented to support two contradictory opinions, the  
7 Committee is the finder of fact and has the authority to resolve  
8 issues of credibility. The State Superintendent cannot  
9 substitute her judgement for that of the County Committee on  
10 issues of fact.

11 The facts show that Appellants attempted to enter into a  
12 tuition agreement with District 21J and District 16 for the  
13 school years 1986-87 and 1987-88. Neither of these agreements  
14 were approved by District 215. Joshua does not meet any Of the  
15 Provisions requiring mandatory approval of a tuition agreement,  
16 Section 20-5-301(2), MCA, and the resident district did not  
17 grant discretionary approval. Section 20-5-302, MCA. The  
18 notice provisions apply to mandatory approvals in a situation  
19 when the district to be attended, in this case, Harlowton,  
20 disapproves a tuition agreement.

21 Clearly, Joshua is an "eligible transportee" and his  
22 resident district is providing transportation reimbursement to  
23 other "eligible transportees". The resident district must  
24 provide transportation to the nearest school in the resident  
25

1 district. The clear language of the statute provides only an  
2 entitlement to transportation to a school in the resident  
3 district and the permission of the resident district must be  
4 obtained to receive transportation to a nonresident school. 42

5 A.G. Op. 115 (1988)

6 DATED this 1 day of May, 1989.

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8 Nancy Keenan  
9 NANCY KEENAN  
State Superintendent

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CERTIFICATE OF SERVICE

This is to certify that on the 1<sup>st</sup> day of May, 1989, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to:

Effie Winsky  
County Superintendent  
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